

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Dennis J. Hunkler,

Petitioner,

v.

United States of America,

Defendant.

Case No. 2:13-mc-40

**Judge Michael H. Watson
Magistrate Judge Abel**

OPINION AND ORDER

Dennis J. Hunkler ("Petitioner"), proceeding *pro se*, filed a petition to quash a summons issued by the Internal Revenue Service ("IRS"). ECF No. 1. The Magistrate Judge issued a report and recommendation ("R&R") recommending the Court deny the petition. ECF No. 1. Petitioner objects. ECF No. 13. For the following reasons, the Court **OVERRULES** Petitioner's objections and **ADOPTS** the R&R.

On November 6, 2013, the IRS issued to Huntington National Bank a summons to appear on December 6, 2013 to give testimony and produce for examination records relative to Petitioner's activity with respect to the 2008 and 2010 taxable periods. Summons, ECF No. 1-1. On November 19, 2013, Petitioner filed a petition to quash the summons on five grounds: (1) the IRS failed to timely notify him of the summons as required 26 U.S.C. § 7609(a)(1); (2)

the IRS failed to provide advance notice that contact would be made with third parties; (3) the summons was issued while a referral for criminal prosecution was pending in violation of 26 U.S.C. § 7602(d)(2)(A); (4) the IRS failed to act in good faith as required by *United States v. Powell*, 379 U.S. 48 (1964); and (5) the IRS will violate banking laws and his right to privacy in causing his records to be turned over to the IRS. R&R 1–2, ECF No. 11; Petition, ECF No. 1.

The Magistrate Judge recommended denying the petition on the grounds that Petitioner failed to show that the IRS failed to timely notify him of the summons and that he has failed to meet his burden to show that enforcement of the summons would be an abuse of the Court’s process. R&R 5, ECF No. 11.

Petitioner does not object to either of these findings. Rather, he requests the Court quash the summons on the additional ground that the notice of summons lacked a signed certificate of service in violation of 26 U.S.C. §§ 7609(a)(2) and 6065. Obj. 2–3, ECF No. 13.

If a party objects within the allotted time to a report and recommendation, the Court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); see *also* Fed R. Civ. P. 72(b). Upon review, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).


Petitioner’s argument is procedurally barred as he did not raise it before the Magistrate Judge. *Nathan v. Ohio State Univ.*, No. 2:10–CV–872, 2013 WL

139874, at *4 (S.D. Ohio Jan. 10, 2013) (“[D]istrict courts do not have to consider arguments on review that were not raised before the magistrate judge.”); *United States v. Pugh*, No. 1:02CR–54, 2012 WL 300736, at *1 (S.D. Ohio Feb. 1, 2012) (“It is well-settled that a defendant is procedurally barred from raising new arguments that were not raised before the Magistrate Judge.”).

Further, even if the Court were to consider Petitioner’s argument, it would fail on the merits. As the Government indicates, Section 7609(a)(2) permits the IRS to serve a notice of summons in the manner provided in Section 7603 or mail it by certified or registered mail to the last known address of the person being notified. 26 U.S.C. § 7609(a)(2). Here, evidence indicates that IRS Agent Timothy O’Boyle mailed a copy of the summons to Petitioner via certified mail. O’Boyle Decl. ¶ 8, ECF No. 6-1. Accordingly, the lack of a certificate of service does not render service of the notice improper. Moreover, 26 U.S.C. § 6065 is inapposite, as it concerns returns, declarations, statements, or other documents filed with the IRS, not third party summons issued by the IRS. 26 U.S.C. § 6065.

For the foregoing reasons, Petitioner’s objections are **OVERRULED** and the R&R is **ADOPTED**. Petitioner’s petition to quash summons, ECF No. 1, is **DENIED**.

IT IS SO ORDERED.



MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT